

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR -7 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0360-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RAUL SOSA MUNIZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20091819001

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Raul Muniz

\_\_\_\_\_  
Buckeye  
In Propria Persona

\_\_\_\_\_  
H O W A R D, Chief Judge.

¶1 Petitioner Raul Muniz seeks review of the trial court’s order denying his of-right petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged he should be allowed to withdraw his guilty plea based on newly discovered evidence and his counsel had been ineffective. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Muniz has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Muniz was convicted of aggravated assault and possession of a deadly weapon by a prohibited possessor after he forcibly entered his girlfriend A.’s apartment with two other men, while holding a gun, and held her, as well as her mother, sister and several children, in the apartment. After the trial court had accepted Muniz’s guilty plea, A. recanted her allegations, and he moved to withdraw his guilty plea. The court denied the motion, stating it found A.’s recantation “incredible, particularly based on the reports of the incident by the other . . . victims.” The court imposed an aggravated thirteen-year prison term for the aggravated assault conviction and a presumptive, 2.5-year prison term for the prohibited possessor conviction.

¶3 Thereafter, Muniz initiated Rule 32 proceedings, arguing in his petition that his guilty plea had created a “manifest injustice” because A.’s recantation was newly discovered evidence entitling him to withdraw his plea and that counsel had been ineffective in failing to locate and interview A. before Muniz pled guilty. In a supplement to his petition, Muniz also presented a letter from A.’s mother in which she

also recanted her identification of Muniz as one of the men who had entered the apartment.

¶4 The trial court summarily denied relief, concluding Muniz had failed to make a colorable claim of ineffective assistance of counsel. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (“To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.”). It also ruled that A.’s and her mother’s recantations were not newly discovered evidence because they were “essentially being offered as impeachment” and did not “seriously undermine [Muniz’s] guilt.” *See Ariz. R. Crim. P. 32.1(e)(3)*. Finally, the court found no manifest injustice in Muniz’s guilty plea because he had acknowledged his guilt and had agreed to the factual basis for the plea.

¶5 On review, Muniz essentially reiterates his arguments below and makes other factual allegations not presented below. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider for first time issues not presented to or ruled on by trial court); *see also Ariz. R. Crim. P. 32.9(c)(1)(ii)* (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review). We cannot say the trial court abused its discretion in denying Muniz’s petition. The court clearly identified the claims Muniz had raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues “in a fashion that will allow any court in the

future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”). Therefore, although we grant the petition for review, we deny relief.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge